

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENDALL ALSTON,

Defendant.

CASE NO. 22-CR-00066

ORDER CONTINUING TRIAL

This case was set for trial on July 11, 2022. Dkt. No. 32. Trial proceedings, however, proved short-lived. Midway through in-person voir dire of the jury venire, it was brought to the Court's attention that [REDACTED] tested positive for the COVID-19 virus on July 6, 2022.¹ Drft. Tr. 7.11.2022 at 43. [REDACTED]

[REDACTED] The Court engaged in a colloquy with defense counsel and the Government to devise a solution that would avoid further delay of trial. [REDACTED]

¹ [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 The Court has a scheduling conflict from July 18 to 21, 2022. *Id.* at 48. But in any event,
4 and for the reasons explained below, the first “safe” day for a trial is July 25, 2022. *Id.* [REDACTED]
5 [REDACTED]

6 [REDACTED] See Emily Anthes, *Can I Stop Isolating If I’m Still Testing Positive for the*
7 *Virus?*, N.Y. Times, May 29, 2022, [https://www.nytimes.com/2022/05/29/health/coronavirus-](https://www.nytimes.com/2022/05/29/health/coronavirus-testing-positive.html)
8 [testing-positive.html](https://www.nytimes.com/2022/05/29/health/coronavirus-testing-positive.html) (noting that some people continue to test positive for COVID-19 for 10 days
9 or longer). The Court additionally notes that [REDACTED]

10 [REDACTED] attorneys for both parties removed their masks when
11 speaking.² While other trial participants kept their masks on, masks do not guarantee protection.
12 And symptoms may appear anywhere from two to 14 days after exposure to the virus. CDC,
13 *Symptoms of COVID-19*, [https://www.cdc.gov/coronavirus/2019-ncov/symptoms-](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html)
14 [testing/symptoms.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html). Therefore, if a trial participant was exposed to the virus on July 11th,
15 symptoms may not appear until the week of July 18th. Given the high transmissibility of the
16 prevalent variants of COVID-19 and the potential exposure that occurred on July 11th, the first
17 reasonably safe date for trial is July 25th. See Eliza Mackintosh, *The ‘worst variant’ is here*, CNN,
18 <https://www.cnn.com/2022/07/13/world/coronavirus-newsletter-intl-07-13-22/index.html>.

19 Although the Government is prepared to go to trial on July 25th, defense counsel has
20 scheduling conflicts that week. Drft. Tr. 7.11.2022 at 48. Defense counsel has instead proposed
21 [REDACTED]

22 ² The CDC recommends that anyone exposed to COVID-19 watch for symptoms and wear a well-fitting mask around
23 others until 10 full days after their last close contact with a COVID-positive individual. CDC, *Quarantine and*
24 *Isolation*, <https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html#iso>. “[A] close contact
is anyone who was less than 6 feet away from an infected person for a total of 15 minutes or more over a 24-hour
period.” CDC, *Frequently Asked Questions: Who is considered a close contact of someone with COVID-19?*,
<https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

1 August 8, 2022—the earliest date he is available. *Id.* at 49–50. The Government does not object.
2 *Id.* at 50.


3 The Court and counsel for both sides endeavored at every turn to accommodate
4 Defendant’s desire to proceed to trial on July 11th. As the parties are aware, however, the COVID-
5 19 pandemic continues to thwart everyday life—often despite reasonable efforts to mitigate its
6 impact. *See* General Order 07-22, In re: Reinstatement of Indoor Mask Requirement Due to Covid-
7 19 and Related Coronavirus. Here, the interest of Defendant and the public in a swift adjudication
8 of the charged offenses must yield to reasonable safety measures. [REDACTED]

9 [REDACTED]
10 [REDACTED] The unexpected turn of events on July 11, 2022
11 forces the Court and the parties to continue trial to the next available date: August 8, 2022.

12 Pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting
13 a continuance outweigh the best interest of the public and Defendant in a speedy trial and such
14 continuance is necessary to allow for the appearance of Defendant and defense counsel at an in-
15 person trial. In addition, under 18 U.S.C. § 3161(h)(7)(B)(i), the Court finds that its failure to grant
16 a continuance in this proceeding would likely make a continuation of the proceeding impossible
17 or result in a miscarriage of justice. 18 U.S.C. § 3161(h)(7)(B)(i); *United States v. Olsen*, 21 F.4th
18 1036, 1045 (9th Cir. 2022) (an ends-of-justice continuance does not require a literal impossibility).

19 For the foregoing reasons, the Court ORDERS that trial shall be continued from July 11,
20 2022 to August 8, 2022. It is further ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7)(A) and
21 (B), the period of delay from the original July 11, 2022 trial date to the new trial date is
22 EXCLUDED when computing the time within which Defendant’s trial must commence under the
23 Speedy Trial Act.

24 Dated this 14th day of July, 2022.



Lauren King
United States District Judge

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